



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200401180

Issuance Date:

September 28, 2004

Stream:

Closing Date:

October 28, 2004

Left Fork Madison Branch

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Appalachian Fuels, LLC
1500 North Big Run Road
Ashland, Kentucky 41102

LOCATION: The proposed project would be located in the left fork of Madison Branch of the Guyandotte River at the town of Lyburn, in Logan County, West Virginia (latitude 37° 46' 15.48" and longitude 81° 56' 56.06"). **Drawing No. 1** depicts the location and extent of jurisdictional impacts for the proposed project.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the proposed hollow fill extension associated with Appalachian Fuels WV3 Surface Mine. An existing sediment pond would be utilized to prevent sedimentation downstream. The existing hollow fill was constructed and reclaimed by Belva Coal Company under Article 3 Permit No. S-94-82. Belva Coal Company forfeited the article 3 permit due to bankruptcy on January 26, 2001. The existing mining activities involve multiple seam contour and point removal with auger and/or highwall mining. Appalachian Fuels have discovered un-mined coal reserves that require the additional spoil disposal area for recovery. In an effort to minimize impacts to undisturbed streams the applicant is proposing to transport overburden 7,500 linear feet from the mine site to the existing and previously disturbed hollow fill site.

The purpose of the project is to surface mine un-reclaimed coal reserves. The indicated reason for impacts to jurisdictional waters is to provide adequate storage of overburden due to otherwise unsuitable locations for the placement of fill. The size of the watershed to be impacted is approximately 183 acres measured from the toe of the fill. Plans of the proposed hollow fill configuration may be referenced on the attached **Drawing No. 2**. The proposed project would permanently impact 1,462 linear feet (or 0.13-acre) of intermittent stream.

Benthic macroinvertebrate survey data was utilized to perform the West Virginia Stream Condition Index (WVSCI), which indicated a total of two scores that were both classified as "good" (70.26 and 73.60). The West Virginia Department of Environmental Protection (WVDEP) Cumulative Hydrological Impact Assessment (CHIA) indicates the Rich Creek Watershed has been extensively surface and deep mined in the past while the water quality is very good and readily capable of supporting a complex ecological chain. In accordance with the U. S. Environmental Protection Agency's "Rapid Bioassessment Protocols For Use In Streams and Wadeable Rivers" Compliance Monitoring Labs, Inc performed a habitat assessment of the stream. The habitat assessment indicates two scores (81 and 153), which classifies the stream as marginal and suboptimal, respectively. The Surface Water Runoff Analysis (SWROA) provided by Empire Consulting, Inc. indicates based upon a 25 year/24 hour storm event the "during mining" and "after mining" conditions from peak discharges would be equal or lower than the "before mining" condition.

The WVDEP has authorized the proposed mining operation by Article 3 Permit No. S-5013-00, dated November 3, 2000, pursuant to the Surface Mining Control and Reclamation Act (SMCRA) of 1977. An associated Incidental Boundary Revision No. 3 for Article 3 Permit No. S-5013-00 was issued on June 8, 2004. Also, the Article 11 National Pollutant Discharge Elimination System (NPDES) Permit No. WV1020366 was issued by the WVDEP on December 11, 2003.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant has submitted an alternatives analysis, which is currently under review.

MITIGATION PLAN: The applicant has submitted a conceptual compensatory mitigation plan (CCMP) to compensate for permanent impacts to waters of the U. S. regulated by the Department of the Army, Corps of Engineers. The CCMP proposes stream mitigation based upon a 2:1 ratio (mitigation to impacts). The CCMP consists of 1,492 linear feet of stream creation on Madison Branch and 1,492 linear feet of stream restoration on Rich Creek. All compensatory mitigation would be designed with natural stream design techniques. Riparian buffer zones extending 25 feet from each stream bank would be re-established with native vegetation. The applicant proposes monitoring of completed mitigation sites for a minimum of five years. Also, all mitigation sites would be protected in perpetuity by an appropriate real estate instrument.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This public notice serves as coordination with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) believe any potential effects to historic properties may result from the proposed permitting action, we request the WVDCH provide information to this office pursuant to Section 106 of the National Historic Preservation Act.

It should be acknowledged previous correspondence, dated July 27, 2000 (FR No. 00-977-LG), received from the WVDCH under the SMCRA permit process did not indicate any known historical, architectural or archaeological sites listed on or eligible for inclusion in the National Register of Historic Places would be affected by this project. In light of this project being re-distributed through the public notice process for purposes of Section 404, it is requested the WVDCH advise this office of their present determination.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, we request the Service provide any additional information pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

It should be acknowledged previous correspondence pursuant to the Endangered Species Act, dated July 8, 2003, has been received by the applicant during the SMCRA permitting process from the USFWS~Elkins Field Office. The previous correspondence indicates the proposed project may effect the potential existence or habitat of the Indiana (*Myotis sodalis*) and/or

Virginia big-eared (*Corynorhinus townsendii virginianus*) bats. Empire Consulting Services, LLC provided correspondence to the USFWS~Elkins Field Office advising the applicant proposes the seasonal timber harvesting restriction (between November 15 and March 31) and advises of a two-mile radius field evaluation. In light of this project being re-distributed through the public notice process for purposes of Section 404, it is requested the USFWS advise this office of their present findings.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

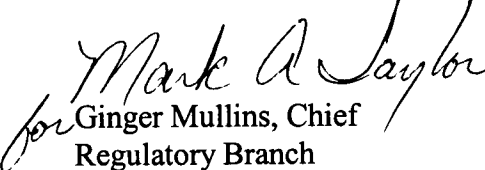
The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

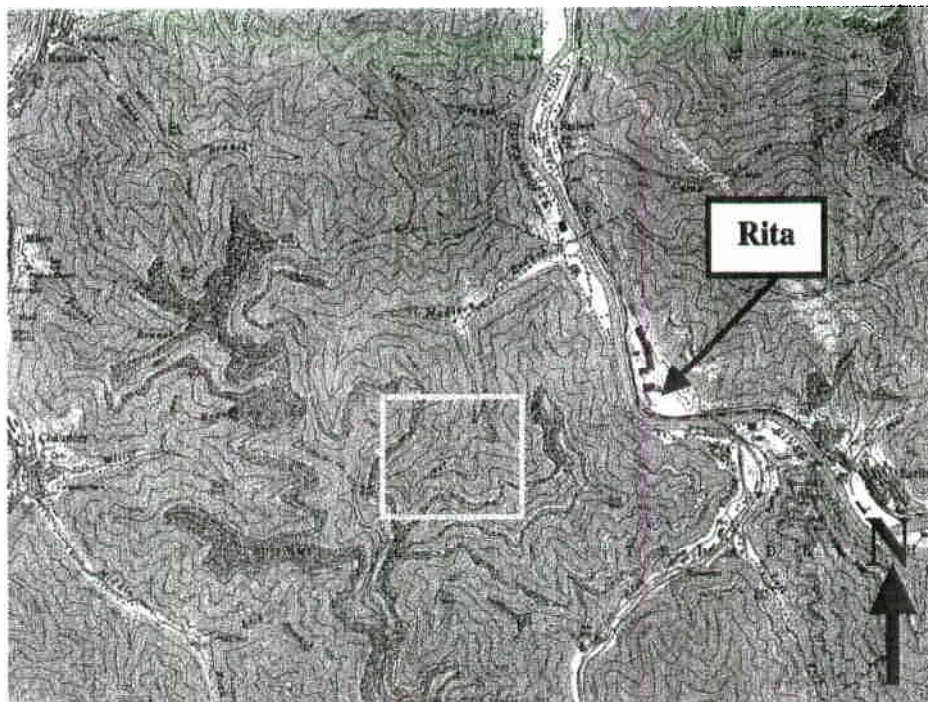
Persons wishing to submit comments, objections or requests for public hearings concerning the Corps of Engineers permit should write:

U. S. Army Corps of Engineers
ATTN: CEORH-OR-F Public Notice No. **200401180**
502 Eighth Street
Huntington, West Virginia 25701-2070

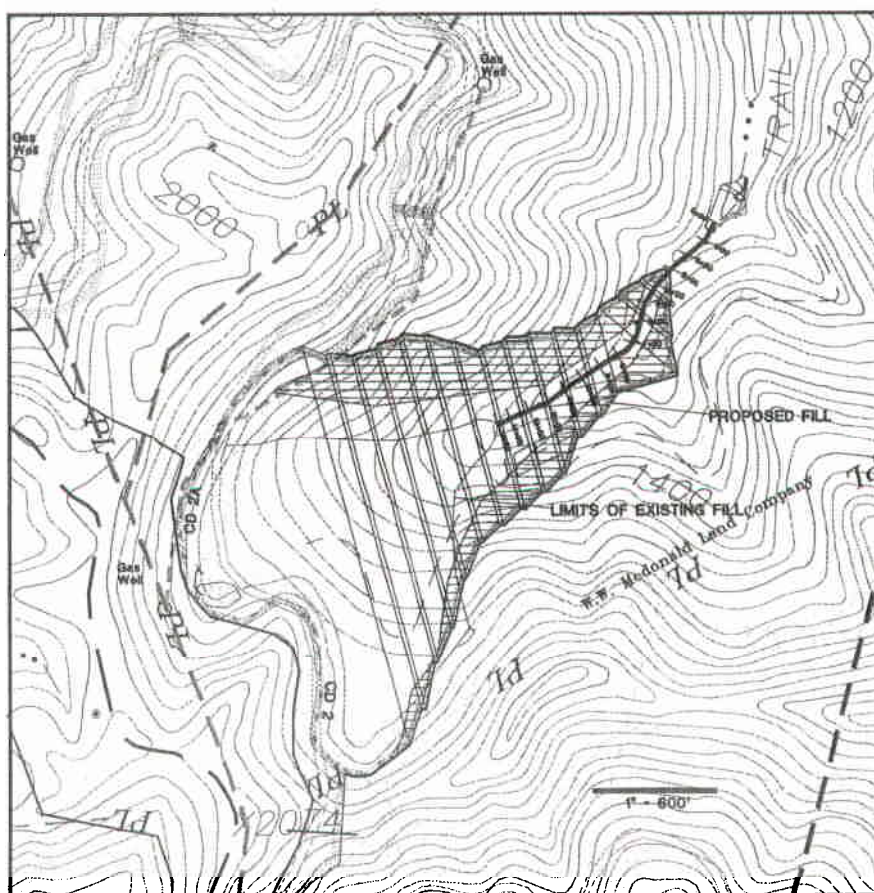
If you have any questions concerning this public notice, please call Mr. Michael Hatten of the South Regulatory Section at 304-399-5710.

(W)


for Ginger Mullins, Chief
Regulatory Branch

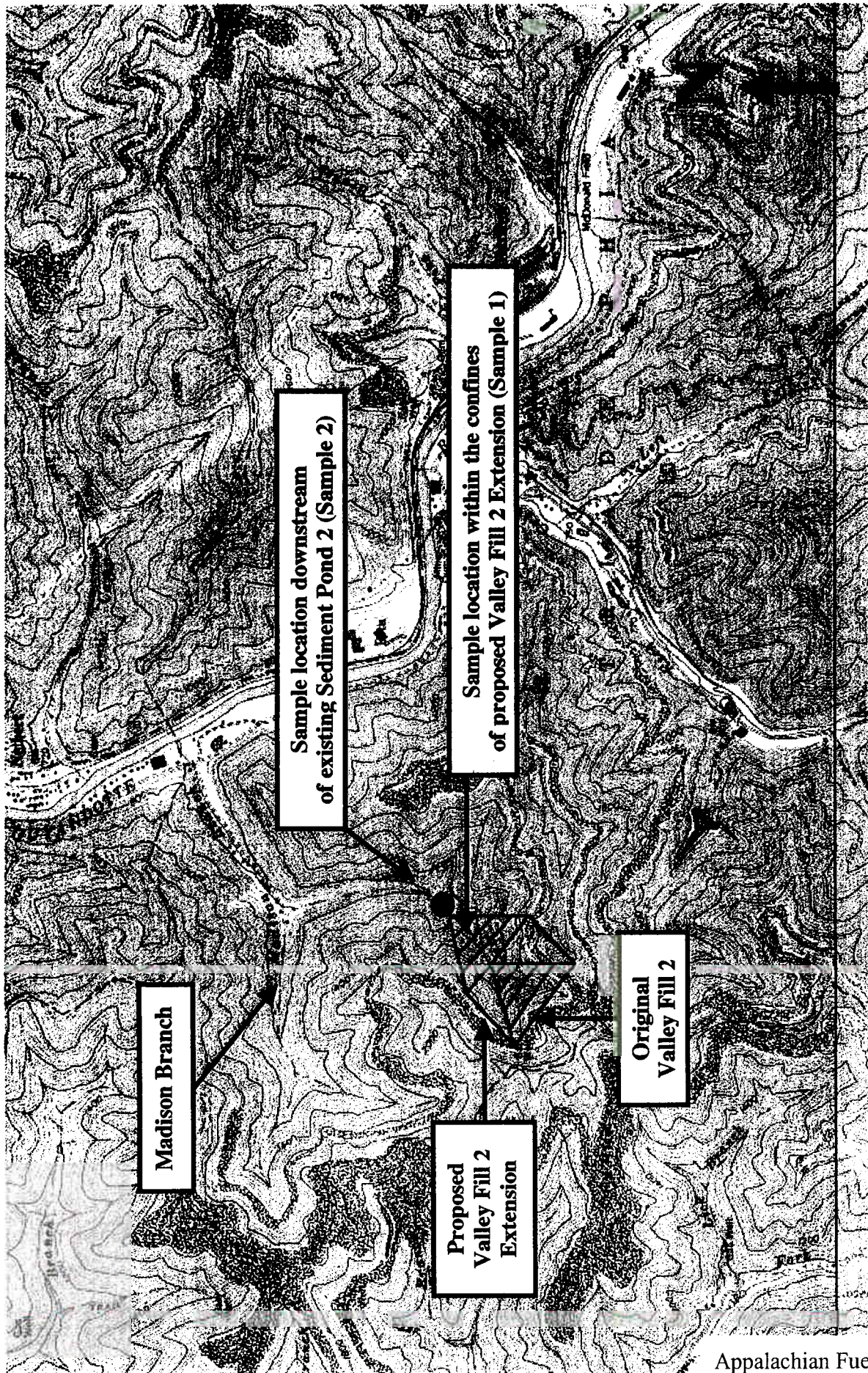


The approximate location of the area included in this study in relation to the town of Rita, West Virginia



The extent of jurisdictional waters of the United States from the back of existing Sediment Pond 2 to the end of the ordinary high water mark at the toe of existing Valley Fill 2.

Appalachian Fuels, LLC
WV3 Surface Mine
200401180-Madison Branch
Drawing 1: Location and Impacts



Map depicting approximate locations of proposed Valley Fill 2 Extension and benthic macroinvertebrate collection stations. This map is not to scale and is for the sole purpose of a visual observation of a relative site location.